

Discussion of SEP Policy at External Stakeholder Meeting

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Public Hearing Room

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Purpose of This Discussion

- ▶ Review SEP policy
- ▶ Hear your feedback
- ▶ Answer questions you may have



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Updates

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[Air Permit Applicability for Equipment and Source Operations Operated During Construction, Repair and Maintenance Events](#)

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[DEP Addresses Debris Disposal Necessitated by 10/29/11 Winter-like Storm Event](#)

October 2011

[Upcoming Air Compliance & Enforcement \(ACE\) Outreach: "A Seminar on Stewardship, Preconstruction Permits, Federal Regulations & ACE Issues"](#)

September 2011

[National Emission Standards for Hazardous Air Pollutants \(NESHAP\) for Industrial, Commercial, and Institutional Boilers Area Sources \(40 CFR Part 63, Subpart JJJJJJ or 6J\)](#)

Compliance & Enforcement plays a critical role within the DEP by deterring violations that would otherwise threaten our environment and the health of our citizens. We pursue the goal of violation deterrence in a manner that is fair and predictable in concert with partners on federal, state and local levels, ensuring that all NJ citizens and groups are protected equally and businesses are on a level playing field.

- ▶ To encourage compliance and environmental stewardship, we continue to seek innovative ways to provide incentives, information and assistance to those we regulate and to the interested public.
- ▶ To ascertain compliance, we employ site inspections and detailed reviews of reported information.
- ▶ To ensure compliance we put violators on notice, take administrative actions, levy penalties and where necessary, work cooperatively with criminal prosecutors.

[Assistant Commissioner's Message](#)

[Compliance and Enforcement Organization Chart](#)

[C&E Strategic Plan](#)

SEP Definition

- ▶ An environmentally beneficial project that a respondent voluntarily agrees to perform as a condition of settling an enforcement action. A SEP is an activity that the respondent would not otherwise have been required to perform, and in which the public or the environment is the primary beneficiary.



Why do SEPs?

To maintain deterrence for noncompliance while also getting environmental improvement that would not have occurred otherwise.



Examples of completed SEPs

- ▶ retrofitting diesel vehicles
- ▶ installation of pollution control devices in advance of a timeline required by pending regulations
- ▶ storm water basin improvement
- ▶ solar panel installation
- ▶ remediation of a closed gas station and installation of rain garden
- ▶ land preservation



Timeline for SEP Policy development

Date	Action
Fall 2010	SEP Research: NJDEP, other states, EPA, academic papers
Dec 2010	Present findings to C&E Managers
Early 2011	SEP ID'd as Transformation priority
March 2011	Present to C&E Transformation Steering Committee
April 2011	Internal Stakeholder meeting
Summer - Fall 2011	Develop policy with AC, Directors and DAG
Dec 2011	Release final SEP Interim Policy
Feb 2012	Internal & External Stakeholder meetings



Themes from Internal Stakeholders

- ▶ Maintain deterrence for non-compliance
- ▶ Seek maximum environmental benefits
- ▶ Measureable Environmental benefits
- ▶ Consistency yet flexible.



Implementing the Policy will...

- ▶ Provide for consistency in SEPs
- ▶ Reduce unnecessary delay in settling cases that have SEPs
- ▶ Enable more SEPs
- ▶ Inform future rule development



General

- ▶ Policy provides:
 - ▶ a general overview on what a Supplemental Environmental Project (SEP) is,
 - ▶ the current conditions under which the Division of Compliance and Enforcement (C&E) incorporates a SEP into a settlement agreement,
 - ▶ and best practices for integrating a SEP into a settlement document.
- ▶ Deviations from policy allowed on case by case basis with approval from Director
- ▶ C&E staff is encouraged to communicate with regulated entities about SEPs and their benefits.
- ▶ Incorporating a SEP into settlement is voluntary, but once included in finalized settlement document, it becomes binding.



DEP's Discretion and Role in SEPs

- ▶ Acceptance of a SEP as part of a settlement agreement is the discretion of the Department

- ▶ C&E's role:
 - ▶ to review SEP proposals, recommend changes to the SEP proposal when necessary,
 - ▶ incorporate the SEP description and schedule into the settlement document,
 - ▶ monitor the compliance with the settlement agreement, and verify that the SEP was completed as required in the settlement agreement.
 - ▶ review interim and final project reports, and visit the site of the SEP as necessary to verify
 - ▶ Neither C&E nor the Department will manage or implement the SEP. Managing and implementing the SEP will be the sole responsibility of the respondent.



Respondent's Role

- ▶ develop and submit a SEP proposal
- ▶ implement, manage, and complete the SEP as required
- ▶ submit necessary verification to the Department to illustrate that the SEP has been completed
- ▶ respondents are encouraged to engage with local residents or community organizations to identify potential SEPs
- ▶ Failure to complete the SEP may require full penalty payment, payment of stipulated penalties, or to complete a substitute SEP



Third Party

- ▶ The respondent may contract with a third party for the third party to execute the SEP on behalf of the respondent entity.
- ▶ Absent specific approval from the Department, oversight costs to perform the SEP may not be paid from the SEP total.
- ▶ The respondent maintains full responsibility for completing the SEP regardless of the role of the third party. Under exceptional circumstances the Department will accept requests for release of responsibility upon payment to a third party.
- ▶ Decisions will be made on a case by case basis, and these exceptions will be evaluated in developing a rule. The Department will consider exceptions for good cause and for the purpose of gathering examples to help develop a rule.



SEP Types

- ▶ pollution reduction, pollution prevention, remediation, and environmental enhancement
- ▶ SEPs that are unacceptable include: monetary donation, general education in which the benefit is not measureable, or any project that lacks environmental benefit.
- ▶ A SEP should not allow for potential further damage to the environment.
- ▶ A SEP should not include activities that the respondent has previously planned, initiated, implemented, budgeted for, or completed. Nor should a SEP include actions that are required by law or part of activities required in order to return to compliance.



Relationship to Violation

- ▶ A SEP may have a direct or indirect relationship with the underlying violation, statute, and geographic area impacted.
- ▶ Look for direct relationship first
- ▶ Indirect Ok if advances DEP goals, and directly benefits public health and/or environment



Benefits to Respondent

- (1) The public or environment is to be the primary beneficiary of any SEP.
- (2) The respondent may incidentally receive some indirect or direct benefit from conducting the SEP. These benefits to the respondent may be reduced from the amount of penalty offset by the SEP
- (3) The SEP cost represents civil penalties assessed by DEP and the respondent must agree not to represent otherwise to any taxing authority or other governmental entity.
- (4) In any publication, promotion, or statement in writing or spoken generated by the respondent, it must be clear and in a prominent manner, that the SEP was completed as a condition of a settlement of an enforcement action.



Managing Funds

- ▶ Unless specific approval from the Assistant Commissioner is given, neither the DEP nor any other state agency may play any role in managing or controlling SEP funds.
- ▶ Another state agency may control SEP funds only if it is for the purpose of carrying out its own SEP as part of an enforcement action.



Penalty Calculation

- ▶ For each dollar spent on the SEP, one dollar can be deducted from the total settled penalty, up to 75% of the total penalty agreed to in the settlement. (except for Water Pollution Control Act in which case only 50% offset allowed)
- ▶ The fact that the respondent is conducting a SEP should not be incorporated into the calculation of the final penalty amount.



SEP Proposal

The respondent shall submit to the Department a detailed description of the proposed SEP.

- ▶ Name and contact information of facility personnel knowledgeable of SEP
- ▶ Project description
- ▶ start date
- ▶ completion date
- ▶ project deliverables
- ▶ project milestones and timeline for reaching milestones
- ▶ timeline for submitting interim and final verification to DEP for review
- ▶ detail of costs
- ▶ **project benefits**
- ▶ identification of parties that benefit from the project
- ▶ role of third party (if applicable)



Review of SEP Proposal

A variety of factors you'll want to consider, such as:

- ▶ capacity of the respondent to complete the proposed SEP
- ▶ availability of C&E/DEP's resources required for effective negotiation and drafting of the SEP provision
- ▶ availability of C&E/DEP's resources or capacity to verify that the SEP was completed as required
- ▶ the compliance history of the respondent
- ▶ the likelihood of environmental benefits being obtained
- ▶ if the SEP advances Department priorities
- ▶ if the SEP reduces environmental burden in an overburdened community
- ▶ if local residents or community organizations were consulted in the development of the proposed SEP



Inclusion of SEP in Settlement Document

The settlement agreement should accurately and completely describe the terms of the SEP, including:

- ▶ start and end date
- ▶ project deliverables
- ▶ specific actions to be performed by the respondent
- ▶ reliable means to verify that the SEP is completed
- ▶ DEP contact to whom interim and final project updates should be sent
- ▶ Terms for if SEP is not completed as required SEP.

Template ACO included in Policy document.



Verification of SEP Completion

- ▶ As specified in the settlement document the respondent is to submit to the Department necessary updates on the progress of completing the SEP
- ▶ These intervals will vary based on the SEP
- ▶ C&E may need to visit the site of the SEP while in progress or once completed to verify that the SEP is completed



Moving Forward...

- ▶ Incorporate SEPs based on policy
- ▶ Improve tracking and measuring of SEPs
- ▶ Evaluate SEPs, our policy, etc. to inform future rule development



5 Key Take Aways

- (1) Yes to SEPs... where practical and consistent with this policy
- (2) SEPs should be targeted to advancing agency goals
- (3) Respondents are encouraged to talk with community when developing the SEP
- (4) Environmental outcomes of SEPs are to be measureable
- (5) The settlement agreement should accurately and completely describe the terms of the SEP



Open Discussion

